

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

J.C. HIGGINBOTHAM

PETITIONER

V.

NO. 1:21-CV-00110-SA-RP

TIMOTHY BARNES

RESPONDENT

ORDER TRANSFERRING CASE TO THE
FIFTH CIRCUIT COURT OF APPEALS

This matter comes before the Court, *sua sponte*, for consideration of the transfer of this cause. Petitioner J.C. Higginbotham, proceeding *pro se*, has submitted a petition for a writ of *habeas corpus* under 28 U.S.C. § 2254. Doc. # 1. The petitioner pled guilty and was sentenced on a charge of capital murder in the Circuit Court of Winston County, Mississippi, on December 1, 2009. *See id.* Higginbotham has filed at least one other unsuccessful § 2254 petition concerning the same conviction which he now seeks to challenge. *See Higginbotham v. Davis*, 1:11-CV-00064-SA-DAS (dismissed for failure to exhaust state court remedies); *Higginbotham v. State of Mississippi*, 1:13-CV-00207-GHD-JMV (dismissed with prejudice as untimely filed).

The Antiterrorism and Effective Death Penalty Act requires that before a district court considers a second or successive petition, “the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Higginbotham has failed to obtain such authorization. Rather than dismissing Higginbotham’s petition on this basis, the Fifth Circuit has allowed district courts to transfer the petition for consideration pursuant to 28 U.S.C. § 2244(a) and (b)(3)(C). *See In re Epps*, 127 F.3d 364, 365 (5th Cir. 1997).

Therefore, in the interest of justice and judicial economy, it is hereby **ORDERED**:

- 1) That this petition shall be **TRANSFERRED** to the Fifth Circuit Court of Appeals for the

petitioner to seek permission to file his successive § 2254 petition;

2) That the Clerk of Court is directed to transfer this petition and the entire record to the Fifth Circuit Court of Appeals in accordance with 28 U.S.C. § 2244(a) and (b)(3)(C), and *In re Epps*, 127 F.3d at 365;

3) That Higginbotham's pending motion to proceed *in forma pauperis* [2] is **dismissed as moot**; and

4) That this case is **CLOSED**.

This, the 6th day of July, 2021.

/s/ Sharion Aycock

UNITED STATES DISTRICT JUDGE